

FIRST AMENDMENT PROJECT

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Winston Hickox, Chair
Market Advisory Committee,
California Environmental Protection Agency
1001 I Street
P.O. Box 2815
Sacramento, CA 95812-2815
Email: climatechange@cal.epa.gov
Fax: (916) 324-0908

Re: Market Advisory Committee and Compliance with Bagley-Keene

Via: U.S. Postal Service, Facsimile, and Email

Dear Mr. Hickox:

Comité Pro Uno is a community based non profit organization dedicated to seeking environmental justice in the communities of Southeast Los Angeles County. They seek to empower the residents of these areas to educate and mobilize them in the fight to determine their own future and to impact upon those organizations that legislate in our areas. As such they are very interested in the work of the Market Advisory Committee and would like to be as engaged in the process as possible.

Comité Pro Uno is aware that the Market Advisory Committee is not noticing meetings, holding meetings open to the public, or otherwise complying with the Bagley-Keene Act Open Meetings Act. Government Code §§11120 et. seq. ("the Act").

Comité Pro Uno has retained First Amendment Project to represent it regarding possible litigation against the Market Advisory Committee regarding violations of the Bagley-Keene Act.

This letter is our client's formal request that the Committee take immediate action to: 1. cure and correct all past violations of the Act, by providing agendas and minutes for all past meetings, and 2. fully comply with the Act for all future meetings of the committee. Absent an immediate communication evidencing an intent to comply with the Act and cure past violations, Comité Pro Uno is prepared to seek a judicial determination that

the committee is in violation of Bagley Keene, and all available remedies. Cal. Gov. Code § 11130.

The Act requires all state committees to hold their meetings open to the public. The Act applies to the Market Advisory Committee. The Market Advisory Committee is a “state body” under the Act, because it was created by Executive Order S-20-06. Gov. Code § 11121. The Governor’s November 18, 2006 order, states “[t]he Secretary for Environmental Protection shall create a Market Advisory committee of national and international experts to make recommendations to the State Air Resources Board on or before June 30, 2007, on the design of a market-based compliance program.” On December 20, 2006, the California Environmental Protection Agency issued a Press Release stating that a 14-member Market Advisory Committee had been formed “according to the Governor’s Executive Order S-20-06.”

Thus, the Committee is subject to the open meetings requirements of Bagley-Keene and must hold meetings open to the public, provide notice of all meetings, release distributed materials that are public records, report any public action taken and agendas, and provide opportunity for the public to directly address each agenda item before it is considered by the committee. Cal. Gov. Code § § 11123, 11125.

The basis for the committee’s resistance to the law and the principles of transparency and open government is flawed. We are aware that the Committee relies on an 1992 Attorney General Opinion issued to the Honorable John R. Lewis. The opinion which is merely advisory and without binding effect is plainly inapplicable. Unlike the Market Advisory Committee, the task force at issue was created by the State Insurance Commissioner alone, and not by a statute or by executive order. Further, dicta concluding that only commissions “appointed” by the Governor are subject to Bagley-Keene, does not mean that the Governor must personally appoint each individual member. The statute applies to any body created by an executive order, as your committee was. The ministerial task of setting up the committee or appointing members has no relevance to the Act’s application. There is no question but that here there is an “executive order,” to wit “a directive executed by the Governor” to create this committee. 75 Ops. Cal. Atty. Gen 263 (1992).

If the Market Advisory Committee does not meet the demands of this letter and come into compliance with the Bagley-Keene Act by June 8, 2007, Comité Pro Uno is prepared to file suit to protect our client’s and indeed all of the public’s right to know what this important body is doing, discussing, reviewing, and recommending.

Sincerely,

Pondra S. Perkins
FIRST AMENDMENT PROJECT
Attorney for Comité Pro Uno

c.c.: Linda Adams, Secretary for California Environmental Protection